

House Bill 251

By: Representative Scott of the 153rd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, so as to provide definitions; to provide that prosecuting attorneys shall be subject to discipline and sanctions, including removal from office and involuntary retirement, by the Judicial Qualifications Commission; to provide for certain canons of ethics for prosecuting attorneys; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to prosecuting attorneys, is amended by adding a new Article 5 to read as follows:

"ARTICLE 5

15-18-90.

As used in this article, the term:

(1) 'Commission' means the Judicial Qualifications Commission created by Article VI, Section VII, Paragraph VI of the Constitution of the State of Georgia.

(2) 'Invidious discrimination' means any action by an organization that characterizes some immutable individual trait such as a person's race, gender, or national origin, as well as religion, as odious or as signifying inferiority, which therefore is used to justify arbitrary exclusion of persons possessing those traits from membership, position, or participation in the organization.

(3) 'Knowingly,' 'knowledge,' 'known,' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(4) 'Law' denotes court rules as well as statutes, constitutional provisions, and decisional law.

1 (5) 'Prosecuting attorney' means the individual responsible for prosecuting cases in
2 superior courts, state courts, probate courts, magistrate courts, municipal courts, and any
3 other court that hears cases involving a violation of the criminal laws of this state or
4 ordinance violations.

5 (6) 'Third degree of relationship' means the following relatives: great-grandparent,
6 grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild,
7 nephew, and niece.

8 15-18-91.

9 (a) Any prosecuting attorney may be removed, suspended, or otherwise disciplined by the
10 commission for willful misconduct in office, for willful and persistent failure to perform
11 the duties of office, for habitual intemperance, for conviction of a crime involving moral
12 turpitude, or for conduct prejudicial to the administration of justice which brings the office
13 of the prosecuting attorney into disrepute. Any prosecuting attorney may be retired for
14 disability which constitutes a serious and likely permanent interference with the
15 performance of the duties of office. The commission shall adopt such rules and regulations
16 as necessary for the implementation of this article.

17 (b) No action shall be taken against a prosecuting attorney except after a hearing and in
18 accordance with due process of law. No removal or involuntary retirement shall occur
19 except upon order of the Supreme Court after review.

20 15-18-92.

21 Prosecuting attorneys shall adhere to the following standards in the conduct of the duties
22 of their office:

23 (1) Prosecuting attorneys shall respect and comply with the law and shall act at all times
24 in a manner that promotes public confidence in the integrity and impartiality of the
25 judicial system;

26 (2) Prosecuting attorneys shall not allow their family, social, political, or other
27 relationships to influence their conduct or judgment;

28 (3) Prosecuting attorneys shall not hold membership in any organization that practices
29 invidious discrimination;

30 (4) Prosecuting attorneys shall refrain from manifesting, by words and conduct, bias or
31 prejudice based upon race, sex, religion, national origin, disability, age, sexual
32 orientation, or socioeconomic status against parties, witnesses, counsel, or others. This
33 does not preclude legitimate advocacy when race, sex, religion, national origin, disability,
34 age, sexual orientation, or socioeconomic status, or other similar factors, are issues in the
35 proceeding;

1 (5) Prosecuting attorneys shall require their staffs and others subject to their direction
2 and control to observe the standards of fidelity and diligence that apply to the prosecuting
3 attorneys and to refrain from manifesting bias or prejudice in the performance of their
4 official duties;

5 (6) Prosecuting attorneys shall disqualify themselves in any proceeding in which their
6 impartiality might reasonably be questioned including, but not limited to, instances
7 where:

8 (A) The prosecuting attorney has a personal bias or prejudice concerning a party or a
9 party's lawyer;

10 (B) The prosecuting attorney served as a lawyer in the matter of controversy, a lawyer
11 with whom the prosecuting attorney previously practiced law served during such
12 association as a lawyer concerning the matter, or the prosecuting attorney has been a
13 material witness concerning it; and

14 (C) The prosecuting attorney or his or her spouse, a person within the third degree of
15 relationship to either of them or the spouse of such a person, or any other member of
16 the prosecuting attorney's family residing in the prosecuting attorney's household:

17 (i) Is a party to the proceeding or an officer, director, or trustee of a party;

18 (ii) Is acting as a lawyer in the proceeding;

19 (iii) Is known by the prosecuting attorney to have a more than de minimis interest
20 that could be substantially affected by the proceeding; or

21 (iv) Is to the prosecuting attorney's knowledge likely to be a material witness in the
22 proceeding or was the victim of the crime alleged in the proceeding;

23 (7) Prosecuting attorneys shall refrain from prosecuting a charge that the prosecuting
24 attorney knows is not supported by probable cause;

25 (8) Prosecuting attorneys shall refrain from making any effort to prevent an accused
26 person from exercising a reasonable effort to obtain counsel;

27 (9) Prosecuting attorneys shall make timely disclosure to the defense of all evidence or
28 information known to the prosecuting attorney that tends to negate the guilt of the
29 accused or that mitigates the offense;

30 (10) Prosecuting attorneys shall exercise reasonable care to prevent persons who are
31 under their direct supervision from making an extrajudicial statement that the prosecuting
32 attorney would be prohibited from making under paragraph (12) of this Code section;

33 (11) Prosecuting attorneys shall not subpoena a lawyer in a grand jury or other criminal
34 proceeding to present evidence about a past or present client unless the prosecuting
35 attorney reasonably believes:

36 (A) The information sought is not protected from disclosure by any applicable
37 privilege;

1 (B) The evidence sought is essential to the successful completion of an ongoing
2 investigation or prosecution; and

3 (C) There is no other feasible alternative to obtain the information; and

4 (12) Except for statements that are necessary to inform the public of the nature and
5 extent of the prosecuting attorney's action and that serve a legitimate law enforcement
6 purpose, prosecuting attorneys shall refrain from making extrajudicial comments that
7 have a substantial likelihood of heightening public condemnation of the accused."

8 **SECTION 2.**

9 All laws and parts of laws in conflict with this Act are repealed.